



DEPARTMENT OF THE AIR FORCE
ARLINGTON, VA

Office of the Deputy General Counsel

02 SEP 2005

MEMORANDUM IN SUPPORT OF THE DEBARMENTS OF:

GARY DOUGLAS BURKS, a/k/a
DOUGLAS BURKS, a/k/a
G. DOUGLAS BURK
OMNI CAPITAL LIMITED PARTNERSHIP, f/k/a
BURKS FAMILY LIMITED PARTNERSHIP
LINDA J OR G DOUGLAS BURK, a/k/a
G D BURK
AM-AR INTERNATIONAL, LTD., a/k/a
AMERICAN ARGEON, a/k/a
AM-AR RIYADH, a/k/a
AIRBORNE PRODUCT SUPPORT - LOUISVILLE, a/k/a
AIRBORNE PRODUCT SUPPORT - KENTUCKY
JAIR UNITED, INC., d/b/a
JET AIRCRAFT INSTRUMENT REPAIR
DOUGLAS INDUSTRIES, INC., d/b/a
AIRBORNE PRODUCT SUPPORT, LTD., a/k/a
APS, a/k/a
APS - CALIFORNIA
U.S. OVERSEAS, INC.
UNC-LSI, INC., a/k/a
UNCLSI, INC.

Effective January 18, 2000, the Air Force suspended Gary Douglas Burks, a/k/a Douglas Burks, a/k/a G. Douglas Burk ("G. Burks"), AM-AR International, Ltd., a/k/a American Argeon, a/k/a AM-AR Riyadh, a/k/a Airborne Product Support - Louisville, a/k/a Airborne Product Support - Kentucky (collectively "AM-AR"), JAIR United, Inc., d/b/a Jet Aircraft Instrument Repair ("JAIR"), Douglas Industries, Inc. ("DII"), d/b/a Airborne Product Support, Ltd., a/k/a APS, a/k/a APS - California ("APS"), and U.S. Overseas, Inc. ("USO") from U.S. government (herein after Government) contracting and from directly or indirectly receiving the benefits of federal assistance programs pursuant to Federal Acquisition Regulation ("FAR") Subpart 9.4.

Effective April 14, 2004, the Air Force proposed the debarments of G. Burks, Omni Capital Limited Partnership, f/k/a Burks Family Limited Partnership ("BFLP"), Linda J or G Douglas Burk, a/k/a G D Burk ("LJGDB"), AM-AR, JAIR, APS, USO, and UNC-LSI, Inc., a/k/a UNCLSI, Inc. ("UNC-LSI") from Government contracting or subcontracting and from directly or indirectly receiving the benefits of federal assistance programs. The actions were initiated pursuant to FAR Subpart 9.4.

By correspondence dated May 8, 2004 ("Submission 1"), May 14, 2004 ("Submission 2"), and January 25, 2005 ("Submission 3") (collectively, the "Submissions"), Douglas A. Weaver ("Weaver"), counsel for G. Burks, L. Burks, BFLP, LJGDB, AM-AR, JAIR, DII, APS, USO and UNC-LSI (collectively, "Respondents"), submitted to the Air Force information and arguments in opposition to Respondents' proposed debarments. I have read and carefully considered the Submissions and all the information in the administrative record (the "Record").

On February 8, 2005, the Air Force conducted a teleconference meeting with G. Burks and Weaver on behalf of the Respondents. Weaver advised that by February 22, 2005, he would submit to the Air Force a final written submission on behalf of Respondents. To date, the Air Force has received no further submissions or communication from Weaver or Respondents.

INFORMATION IN THE RECORD

Information in the Record indicates that at all times relevant hereto:

1. AM-AR and DII were Kentucky companies engaged in the supply and repair of military aircraft parts to foreign countries, the Department of Defense ("DoD"), and the United States Air Force (USAF). Specifically, AM-AR and DII performed under Government Foreign Military Sales Program ("FMS") contracts¹ held by Science Applications International Corporation ("SAIC"), and Lear-Siegler Management Services, Inc. ("Lear-Siegler").
2. JAIR, a subsidiary of AM-AR, was engaged in the repair and sale of military aircraft parts and instruments. JAIR had been the subject of a USAF investigation related to the repair of aircraft gyroscopes and paid a civil settlement to the Government in 1997.
3. G. Burks owned and operated AM-AR, JAIR, DII, USO, and UNC-LSI. G. Burks was a part owner of APS.
4. APS awarded subcontracts to AM-AR in order to create layers of various companies and commensurate escalated profit margins in order to amass sufficient income to pay large bribes to specific Royal Saudi Air Force ("RSAF") officials. APS also established a "pseudo- company" with the intent to provide a means of controlling the profits received from various suppliers who were identified as being related to APS. The "pseudo- company" has the same address as AM-AR.
5. BFLP was a Kentucky company engaged in the business of providing general business services and was operated from 809 Rugby Place, Louisville, Kentucky, the residence of G. Burks. BFLP and LJGDB were both located at this address, where they conducted business.

¹ The FMS was a DoD program designed to assist friendly foreign nations in acquiring needed military items from U.S. suppliers. Pursuant to the FMS, the USAF selected prime contractors in the United States to purchase military items on behalf of foreign governments, and is paid a fee for this service. In return, the DoD provides safeguards to the foreign nations against fraud and abuse by American contractors.

6. LJGDB was a Kentucky company owned by G. Burks and was operated from the residence of G. Burks.²

7. Osama Al-Sayed ("Al-Sayed"), a citizen of Saudi Arabia, was a director of JAIR and the agent for AM-AR and Lear-Siegler in Saudi Arabia.

8. AM-AR made payments of \$2,000 per month to an unidentified individual purporting to have a relationship with the President of Burkina Faso in an attempt to curry influence with the government of Burkina Faso. AM-AR was attempting to broker a deal to provide television capabilities to Burkina Faso.

9. During a visit to England in 1996, an AM-AR employee withdrew \$25,000 from a bank account in England. That employee, G. Burks and other AM-AR employees agreed to break up the \$25,000 into smaller increments and return to the U.S. carrying less than \$10,000 each to evade U.S. customs reporting requirements.

10. Between April 17, 1997 and June 3, 1997, following the service of U.S. Federal Grand Jury subpoenas, G. Burks obstructed justice by directing AM-AR employees to shred documents requested by the Grand Jury. G. Burks specifically instructed Larry L. May ("May"), an AM-AR vice president, to destroy documents that May believed were incriminating.

11. On December 7, 1999, a thirty-eight count indictment (the Indictment) was filed in the United States District Court for the Western District of Kentucky ("USDC-WDKY"). The Indictment alleged that G. Burks, David A. Klemenz ("Klemenz")³, May, John Demeritt ("Demeritt")⁴, and Charles J. Knoblach ("C. Knoblach")⁵ committed the offenses of conspiracy (18 U.S.C. § 371), mail fraud (18 U.S.C. § 1341), paying kickbacks (41 U.S.C. § 53), money laundering (18 U.S.C. §§ 1956 and 1957), and racketeering (18 U.S.C. § 1962(c)). Additionally, the Indictment alleged that G. Burks committed the offense of obstructing justice (18 U.S.C. § 1512(b)).

12. G. Burks and Klemenz committed conspiracy, mail fraud, and money laundering by submitting false invoices through fictitious companies to APS, DII's business name, thereby illegally inflating the prices charged to the RSAF for C-130 parts, and by submitting bogus and inflated invoices directly to the RSAF for payment. G. Burks owned and operated several shell companies (the "Shell Companies") for this scheme.⁶

² Although the surname "Burks" was spelled "Burk" in the Dun and Bradstreet report for LJGDB, G. Burks' residence address is the same address as reported for LJGDB.

³ Klemenz was AM-AR's chief financial officer.

⁴ Demeritt was a site manager for Lear-Siegler who assisted AM-AR in selling overpriced spare aircraft parts to the RSAF in exchange for kickbacks.

⁵ C. Knoblach was a buyer for SAIC who recommended the issuance of purchase orders to JAIR in exchanges for kickbacks.

⁶ In or about April 1994, Burks and Klemenz established fictitious companies for the purpose of creating false invoices in furtherance of this conspiracy. Burks and Klemenz established postal mail drops, telephone answering services, call forwarding patterns, and the design and printing of stationary, false signature stamps, invoices and material quote forms for the shell companies.

13. G. Burks, Klemenzen, and May used AM-AR as an instrument to further this conspiracy while executing five acts of racketeering involving mail fraud, money laundering, and extortion. One of the acts of racketeering was the extortion of Derco Aerospace ("Derco")⁷ by G. Burks, Klemenzen, and Al-Sayed. G. Burks, Klemenzen, and Al-Sayed threatened to cause economic harm to Derco by interfering with its RSAF contract. G. Burks, Klemenzen, and Al-Sayed ultimately succeeded in securing a "procurement agreement" with Derco that set aside \$4.2 million in parts for AM-AR to supply to it as a subcontractor. From this agreement, AM-AR generated profits that were passed on to Al-Sayed through Four Corners International (FCI).

14. Counts 18 through 28 of the Indictment charged G. Burks, May, Klemenzen, and Demeritt with conspiracy, kickbacks, and mail fraud. In this situation, Lear-Siegler was an USAF FMS contractor acting as the buyer of aircraft parts ordered by the RSAF. Lear-Siegler was required to operate under the same acquisition rules as a Government agency. These rules prohibited AM-AR from being the sole source parts supplier to Lear-Siegler, unless it provided cost or pricing data for the parts and disclosed its costs and profit margins.

15. At Demeritt's suggestion, G. Burks, May, and Klemenzen established the Shell Companies and used bogus distributors ("Sham Distributors") through which they provided bogus parts bids. The Shell Companies and Sham Distributors bid on parts orders to project the illusion of competition. Additionally, G. Burks, May, and Klemenzen agreed to pay Demeritt 1% of the value of parts sold to the USAF through Lear-Siegler. AM-AR fraudulently inflated prices charged to Lear-Siegler by \$1.2 million.

16. On June 29, 2000, May pled guilty to conspiracy to commit mail fraud and to pay kickbacks, of paying kickbacks, mail fraud, money laundering, racketeering and forfeiture, and filing false U.S. tax returns in connection with the scheme designed to defraud the Government and the Kingdom of Saudi Arabia. May was sentenced in USDC-WDKY on November 30, 2001.

17. On August 21, 2001, Klemenzen pled guilty to a kickback scheme and aiding and abetting in connection with the scheme designed to defraud the Government and the Kingdom of Saudi Arabia. Klemenzen was sentenced in USDC-WDKY on November 30, 2001.

18. On August 21, 2001, G. Burks pled guilty to conspiracy to pay kickbacks and Federal income tax fraud in connection with the scheme designed to defraud the Government and the Kingdom of Saudi Arabia. G. Burks was sentenced in USDC-WDKY on January 30, 2002, to a year and a day in a community detention facility, fined \$42,613, ordered to pay restitution of \$107,386, and ordered to pay a special assessment of \$200. G. Burks is subject to two years of supervised release after serving his sentence.

19. G. Burks, May, and Klemenzen, through JAIR, sought business from SAIC under an USAF FMS contract with the RSAF⁸. In order to secure that business G. Burks, Klemenzen, and May agreed with C. Knoblach to pay C. Knoblach a 3% kickback on the value of each order that he

⁷ Derco was a Wisconsin company in the business of supplying military aircraft parts. Derco was under a \$21 million contract to provide RSAF spare parts in support of C-130 aircraft flown from Jeddah Air Force Base, Saudi Arabia.

⁸ Under the regulations that applied to the USAF FMS contract, JAIR was forbidden to pay kickbacks to any employee of SAIC.

directed to JAIR. This kickback scheme operated from May 1995 to April 1997. For his part, C. Knoblach provided to G. Burks, May, and JAIR their competitors' bids permitting JAIR to underbid them and win SAIC contracts.

20. Klemenz and May assisted in this kickback scheme by issuing and delivering to C. Knoblach checks and wire transfers totaling over \$109,000 to accounts in the Channel Islands⁹ and Bangkok, Thailand.

21. Jeffery Atkinson ("Atkinson"), a purchasing supervisor at SAIC on FMS orders for spare aircraft parts and aircraft part repairs, accepted gifts and gratuities from AM-AR and provided AM-AR with a price list detailing an AM-AR competitor's prices for repairs. The price list provided by Atkinson allowed AM-AR to underbid its competitor by approximately 10% on repair orders resulting in AM-AR being awarded a majority of this business.

22. On June 29, 2000, C. Knoblach pled guilty to conspiracy to commit mail fraud and to pay kickbacks, of paying kickbacks, mail fraud, money laundering, and filing false U.S. tax returns in connection with the scheme designed to defraud the Government and the Kingdom of Saudi Arabia. C. Knoblach was sentenced in USDC-WDKY on November 30, 2001.

23. Demeritt accepted at least \$19,000 in kickbacks from AM-AR in exchange for providing preferential treatment in the award of purchase orders to AM-AR, which sold parts kits to the USAF at inflated prices. In order to conceal the inflated prices, AM-AR created or facilitated the creation of the Shell Companies and the Sham Distributors creating the illusion of adequate competition. AM-AR paid kickbacks to Demeritt in exchange for Demeritt improperly allowing these sales to go forward without sufficient review that would have detected the inflated prices.

24. Dawntrive, a/k/a Dawnthrive, Ltd. ("Dawnthrive") was an AM-AR partner company in England. Dawnthrive received purchase orders from RSAF via prime contracts with AM-AR or SAIC under the FMS program.

25. David Coombs ("D. Coombs") was a principal, managing director, and majority shareholder of Dawnthrive and principal of APS. D. Coombs conspired with G. Burks, May, and Klemenz to launder money through Dawnthrive to offshore bank accounts to hide income from the U.S. Internal Revenue Service. G. Burks would move money out of the AM-AR companies, through D. Coombs at Dawnthrive, and then into his offshore bank account. Dawnthrive also facilitated the transfer of bribe money from AM-AR to C. Knoblach.

26. Al-Hadhara was a Saudi company engaged in the business of general commodities. Al-Hadhara was funded by G. Burks and used as an offshore money-laundering center used primarily to make bribe payments in Saudi Arabia.

27. Colonel Mohammed Al-Beeshi, a/k/a Colonel Beeshi ("Al-Beeshi") was a colonel in the RSAF and was the depot commander at Jeddah Air Force Base, Saudi Arabia. Al-Beeshi accepted

⁹ May instructed C. Knoblach to establish an off shore bank account to hide bribe payments from Government detection. May specifically advised C. Knoblach not to transfer any money into the U.S. in excess of \$10,000 to prevent Government officials from discovering the kickback scheme.

bribe payments from G. Burks totaling 5% of the orders AM-AR received from Saudi Arabia for the repair of LTN51s, an aircraft navigational instrument. G. Burks gave Al-Beeshi \$10,000 cash as part of their 5% agreement during a 1996 meeting that included G. Burks, May, and Al-Beeshi.

DISCUSSION

Respondents offer several arguments in opposition to their proposed debarments. First, they loosely and inaccurately cite the Federal Acquisition Regulation ("FAR") and the Defense FAR Supplement ("DFARS") to support a host of legally erroneous arguments and irrelevant rhetorical questions on the length of time a contractor can be suspended and debarred.¹⁰

The Submissions did not separate the distinct issues of the permissible length of a suspension and the permissible length of a debarment. With respect to the length of Respondents' suspensions, the Submissions argue only that suspensions "will be for short temporary periods."¹¹ A suspension is temporary pending the completion of investigation and any ensuing legal proceedings. FAR 9.407-4. The investigation of the AM-AR conspiracy continued until at least June 29, 2004, over a month *after* Respondents were proposed for debarment.¹² In light of the complexity of this case and the further development of findings during the investigation, I find that the timing and length of Respondents' suspensions was reasonable. *See Frequency Electronics, Inc. v. United States Dep't of the Air Force*, 151 F. 3d 1029, 1035 (4th Cir. 1998).

The Submissions argue that the FAR prohibits the USAF from debaring Respondents for any length of time since Respondents have been suspended since 2000. Although *generally* debarment should not exceed three years, the Suspending and Debaring Official ("SDO") has the discretion to impose a period of debarment for greater or less than three years, commensurate with the seriousness of the causes. *See* FAR 9.406-4(a)(1). Further, the suspension period need not be added to the period of the debarment as the Respondents claim. It need only be "considered" in determining the length of the debarment. *See* FAR 9.406-4(a)(2). In reaching my decision here, I have carefully considered the length of the suspension.

Respondents next contend that "just about every conclusion and many of the statements that purport to be facts in [the Memorandum in Support of the Proposed Debarments ("PFD")] are erroneous." Submission 1, at 3. Despite this ambiguously broad denial, Respondents do not specifically deny any of the allegations enumerated in the PFD.

Respondents admit that AM-AR, JAIR, DII, APS, USO and UNC-LSI "had some independent involvement in the actions the subject of the criminal proceeding [sic]." Submission 2, at 3. Since Respondents fail to deny any specific allegation enumerated in the PFD,

¹⁰ *See* Submission 1, at 1 ("We have already passed the indicated three year limitation when you consider that [G. Burks] was suspended in January of 2000."); Submission 2, at 2 ("An extension may not be based solely on the facts used in the original debarment. . . . The suspension period is to be added to the debarment period not to exceed three years without new evidence.")

¹¹ Respondents' discrete argument with respect to the permissible length of a suspension in full is as follows: "The FAR further provides that suspensions will be for only short temporary periods and that the suspension period will be added to the applicable debarment period. It also provides in this case that the suspension period will be added to the applicable debarment period." Submission 2, at 2.

¹² Respondents did not respond to their suspensions until after they were proposed for debarment on April 14, 2004.

Respondents essentially are admitting to all misconduct attributed to the aforementioned entities. If AM-AR, JAIR, DII, APS, USO and UNC-LSI are found to be non-responsible Government contractors, the remaining respondents, *i.e.*, G. Burks, BFLP, and LJGDB, by proper imputation and affiliation pursuant to FAR 9.406-5 and FAR 9.406-1(b), also are non-responsible.

In the Submissions, Respondents also make several unsupported assertions they believe demonstrate G. Burks' present responsibility. First, Respondents assert that G. Burks has never had any difficulties with law enforcement agencies "other than the one noted here." Submission 2, at 2. It is unclear what "the one noted here" is. But this assertion is false since G. Burks and one or more of his companies have been the subjects of at least one other Government fraud investigation.¹³ This false assertion is further evidence that Respondents are presently non-responsible.

Second, Respondents assert that G. Burks has entered into contracts without difficulty, he owns a building and treats his tenants fairly, and engages in business with a host of businesses and Government agencies. Accepting this assertion as true, it is of little value or relevance in demonstrating Respondents' present responsibility as Government contractors.

Third, Respondents assert that G. Burks has always filed accurate tax returns, that a proposed adjustment after an audit resulted in a guilty plea, and that all taxes are current. This assertion is contradictory, as G. Burks admittedly has not always filed accurate tax returns as evidenced by his plea of guilty and subsequent conviction for Federal income tax fraud on August 21, 2001. Again, Respondents bring their honesty and credibility into question by minimizing G. Burks' criminal conviction and by forwarding an assertion that is not accurate.

Fourth, Respondents assert that G. Burks "served his nine months with good behavior and the judge dismissed the remaining two year supervision from his sentence." Submission 2, at 2. Accepting this assertion as true, it has little weight with respect to Respondents' present responsibility. It is expected that one refrain from engaging in bad behavior, and the fact that G. Burks conducted himself in accordance with societal norms over the span of nine months pales in comparison to his egregious misconduct detailed in the PFD and his present demonstration of lack of responsibility to be a Government contractor.

Fifth, Respondents assert that G. Burks has not missed a day of work in the past two years. Accepting this assertion as true, it is insignificant in light of the gravity of the conspiracy and the present indicia of G. Burks' lack of present responsibility to be a Government contractor.

Finally, Respondents assert that G. Burks has a number of employees who can testify regarding G. Burks' integrity and ability to serve as a responsible contractor. Respondents have submitted no witness statements, affidavits, or other testimonials to support this assertion, so such cannot be considered here. More importantly, the Record contains statements from a number of G. Burks' former employees and associates which implicate G. Burks in the AM-AR conspiracy.

¹³ JAIR had been the subject of a USAF investigation related to the repair of aircraft gyroscopes and paid a civil settlement to the Government in 1997, which was a matter independent of the activities giving rise to the Government's investigation of the AM-AR conspiracy. See PFD, at 4.

Respondents argue that “the company’s” Government contracts only existed for a short time period and that G. Burks has “never been in trouble with any other contract.”¹⁴ Submission 3, at 1. This statement is vague, overly broad, and without supporting evidence. But accepting this assertion as true, it only shows that Respondents may have been responsible when performing on non-Government contracts. This is not evidence of present responsibility to be Government contractors.

Respondents argue that G. Burks’ criminal and seriously improper conduct is to be considered as “rating positively” on the factor of the actual or potential harm done since the “district court judge prompted the settlement of this case precisely because he could not figure out what harm had been done by [G. Burks].” Submission 3, at 1-2. Respondents offer no supporting evidence to buttress this contention, and they do not explain how the court could accept G. Burks’ guilty pleas if it “could not figure out what harm had been done by G. Burks.” *Id.* Respondents also fail to acknowledge the harm AM-AR caused the Government by selling parts kits to the USAF at inflated prices or by bribing foreign officials and entities. The failure to acknowledge the harmful consequences of their criminal and seriously improper conduct is further evidence of their lack of present responsibility to be Government contractors.

The undisputed evidence in the Record against Respondents establishes misconduct that is serious and repeated, and demonstrates the Respondents’ lack of present responsibility to be Government contractors, as well as the need to debar Respondents for a period in excess of that generally imposed. Among other things, there is undisputed evidence in the Record that:

1. AM-AR was closely associated with the Sham Distributors, which were established to circumvent Government procurement regulations.
2. During a visit to England in 1996, G. Burks and other AM-AR employees evaded U.S. customs reporting requirements.
3. JAIR paid a civil settlement to the Government in 1997 as a result of an USAF investigation related to the repair of aircraft gyroscopes.
4. AM-AR made payments of \$2,000 per month to an unidentified individual purporting to have a relationship with the president of Burkina Faso in an attempt to curry influence with the government of Burkina Faso in connection with AM-AR’s attempt to broker a business deal.
5. Between April 17, 1997 and June 3, 1997, following the service of U.S. Federal Grand Jury subpoenas, G. Burks obstructed justice by directing AM-AR employees to shred documents requested by the grand jury.
6. G. Burks and another AM-AR employee committed conspiracy, mail fraud, and money laundering by submitting false invoices through fictitious companies to APS, thereby illegally inflating the prices charged to the RSAF for C-130 parts, and by submitting bogus and inflated

¹⁴ The submission does not identify what “the company” is. However, it can be deduced that “the company” refers to companies identified in the submissions and owned or controlled by G. Burks, *i.e.*, AM-AR, JAIR, DII, APS, USO and UNC-LSI.

invoices directly to the RSAF for payment. It is undisputed that the Shell Companies for this scheme were owned and operated by G. Burks.¹⁵

7. G. Burks used AM-AR as an instrument to further the broader conspiracy while executing five acts of racketeering involving mail fraud, money laundering, and extortion.

8. On June 29, 2000, May, an AM-AR vice president, pled guilty to conspiracy to commit mail fraud and to pay and provide kickbacks, mail fraud, money laundering, racketeering and forfeiture, and filing false tax returns in connection with the scheme designed to defraud the Government and the Kingdom of Saudi Arabia.¹⁶

9. On August 21, 2001, Klemenzenz, AM-AR's chief financial officer, pled guilty to participating in a kickback scheme and aiding and abetting in connection with the scheme designed to defraud the Government and the Kingdom of Saudi Arabia.

10. On August 21, 2001, G. Burks pled guilty to conspiracy to pay kickbacks and federal income tax fraud in connection with the scheme designed to defraud the Government and the Kingdom of Saudi Arabia.

11. D. Coombs conspired with G. Burks and other AM-AR employees to launder money through Dawnthrive to offshore bank accounts to hide income from the U.S. Internal Revenue Service and to transfer bribe money.

12. Al-Hadhara was funded by G. Burks and used as an offshore money-laundering center used primarily to make bribe payments in Saudi Arabia.

13. G. Burks made bribe payments to a RSAF official.

What is most troubling is that Respondents continue to refuse to accept responsibility for their undisputed misconduct. Respondents claim that "[f]ederal investigators destroyed [G. Burks'] business and livelihood in 1997," and that "enforcement personnel ... put a criminal spin on every thing they saw." Submission 1, at 2-3. Respondents do not forthrightly dispute the veracity of the numerous witness statements in the Record or their own guilty pleas. Respondents continue to blame others and consider the current suspension and debarment actions as a continuation of a "wasteful prolonged unjust bureaucratic persecution." Weaver, Douglas "RE: AM-AR International, Ltd., et al, Proposed Debarments" E-mail to USAF January 13, 2005. It was Respondents' criminal and seriously improper conduct that caused the Government's investigation and prosecution of G. Burks, a fact that Respondents *presently* fail to accept.

¹⁵ In or about April 1994, Burks and Klemenzenz established fictitious companies for the purpose of creating false invoices in furtherance of this conspiracy. Burks and Klemenzenz established postal mail drops, telephone answering services, call forwarding patterns, and the design and printing of stationery, false signature stamps, invoices and material quote forms for the shell companies.

¹⁶ May was the vice president of AM-AR and JAIR and was responsible for the oversight of their operations and sales. May also operated USO, a Delaware corporation and a subsidiary of AM-AR.

Respondents argue that “the duration of the wrong doing was a specific incident and was resolved when the employee was fired.” Submission 3, at 2. It is unknown to which one of the several “specific incidents” this assertion refers. But there does not exist a single allegation that functions as the linchpin in determining Respondents’ present responsibility. The Record and the PFD contain numerous undisputed allegations of criminal and seriously improper conduct, and in aggregate the undisputed allegations unequivocally demonstrate a lack of responsibility. Respondents were non-responsible in 1997. Respondents have offered little evidence indicative of their present responsibility, and there is nothing in the Record demonstrating present responsibility at any time between 1997 and the present, a span of at least seven years. I find that Respondents lack present responsibility.

Pursuant to FAR 9.406-1, the seriousness of a contractor’s acts or omissions and any remedial measures or mitigating factors should be considered in making a debarment decision. The Submissions assert that G. Burks made AM-AR employees and records available to investigators. Respondents do not indicate which records were made available to investigators or whether said records were helpful or even relevant to the Government’s investigation. Moreover, there is evidence in the Record – which Respondents do not dispute – that G. Burks obstructed justice by instructing AM-AR employees to shred incriminating documents. Respondents’ failure to address this very serious act of misconduct renders this assertion aggravating rather than mitigating, and is further evidence of Respondents’ lack of present responsibility.

The Submissions assert that “[t]he employee making the bribe and [G. Burks] were removed from their respective positions in the company.” Submission 3, at 2. Respondents do not assert that these individuals were removed from the contracting enterprise. *Id.* It is alleged – and not denied – that at least three AM-AR employees were involved in the payment of bribes. Since only one AM-AR employee was “removed,” at least one AM-AR employee who paid bribes retained his position within the enterprise. Accepting Respondents’ assertion as true, removal of one employee and G. Burks has failed to fully address the gravity of the problem. To the contrary, the fact that only two AM-AR employees were “removed” when three employees were involved in the payment of bribes is aggravating, rather than mitigating, and is further evidence of the Respondents’ lack of present responsibility.

The Submissions assert that G. Burks “paid the agreed fines and costs and served his several months in a half way house with good behavior.” Submission 3, at 2. Again, G. Burks’ payment of agreed fines and costs is not mitigating, as he had little choice but to do so. Although Respondents offer no evidence to support their assertion that G. Burks served his time with good behavior, I accept this assertion as true. However, I find that the mitigating value of G. Burks’ good behavior is minimal when balanced against the aggravating factors and other indicia of Respondents’ present lack of responsibility to be Government contractors.

The Submissions assert that G. Burks “recognizes the seriousness of this problem and stands ready to take whatever action is required to remedy the situation.” Submission 3, at 2. The undisputed evidence and the Submissions indicate that the Respondents have not accepted responsibility for their criminal and seriously improper conduct and have taken no appreciable remedial action to ensure that such conduct is not repeated. Although G. Burks claims to be willing to implement remedial measures, he has not done so to date and proposes no specific

remedial actions. A responsible contractor does not rely on the Government to tell it how to be responsible. I find Respondents' position on this matter as further evidence of their lack of present responsibility to be Government contractors.

G. Burks was the mastermind and ringleader of an international conspiracy designed and executed to defraud and extort millions of dollars from the Government, Saudi Arabia, and private companies and businessmen. Respondents choose to blame the Government for their legal problems rather than accept responsibility for their criminal and seriously improper conduct. Because of the egregiousness of Respondents' criminal and seriously improper conduct, their failure to accept responsibility for that conduct, and evidence of their lack of present responsibility to be Government contractors, pursuant to FAR 9.406-4(a)(1) I find that a period of debarment longer than the three years generally imposed is required in this case to protect the Government's interests.

FINDINGS

1. The criminal conviction of G. Burks provides a separate basis for his debarment, pursuant to FAR 9.406-2(a) (1), (3), and (5).
2. The conduct of G. Burks, AM-AR, JAIR, DII, APS, and USO is so serious or compelling a nature that it affects their present responsibility to be Government contractors or subcontractors and provides a basis for their debarments pursuant to FAR 9.406-2(c).
3. Pursuant to FAR 9.406-5(a), the criminal, fraudulent, and seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with his or her performance of duties for or on behalf of the contractor, or with the knowledge, approval or acquiescence of the contractor. The criminal and seriously improper conduct of G. Burks may be imputed to AM-AR, JAIR, DII, APS, USO, and UNC-LSI. These imputations provide separate causes for the debarments of AM-AR, JAIR, DII, APS, USO, and UNC-LSI.
4. Pursuant to FAR 9.406-5(b), the criminal, fraudulent, and seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor, who knew of, or had reason to know of the contractor's criminal, fraudulent, and seriously improper conduct. The seriously improper conduct of AM-AR, JAIR, DII, and USO may be imputed to G. Burks, as an officer, director, shareholder, partner, employee, or other individual associated with AM-AR, JAIR, DII, and USO. This imputation provides a separate basis for the debarment of G. Burks.
5. In accordance with FAR 9.406-5(c), the fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Pursuant to FAR 9.406-5(c):

- a. The seriously improper conduct of JAIR and AM-AR may be imputed to each other. This imputation provides a separate basis for the debarment of each of them.
 - b. The seriously improper conduct of USO and AM-AR may be imputed to each other. This imputation provides a separate basis for the debarment of each of them.
 - c. The seriously improper conduct stemming from the collective action of AM-AR and Dawnthrive can be imputed to each other, because the seriously improper conduct of AM-AR and Dawnthrive was part of a concerted action in connection with a joint venture or similar arrangement consisting of AM-AR and Dawnthrive. This imputation provides a separate basis for the debarment of AM-AR.
6. Pursuant to FAR 9.406-1(b), debarments may be extended to the affiliates, as defined in the FAR 9.403, of a contractor.
- a. G. Burks, AM-AR, JAIR, BFLP, LJGDB, DII, APS, USO, and UNC- LSI are affiliates because directly or indirectly G. Burks controls or can control AM-AR, JAIR, BFLP, LJGDB, DII, APS, USO, and UNC- LSI. That affiliation provides a separate basis for the debarments of AM-AR, JAIR, BFLP, LJGDB, DII, APS, USO, and UNC- LSI.
 - b. AM-AR, BFLP, and LJGDB are affiliates of each other as evidenced by the interlocking management or ownership, use of shared/common facilities, equipment, and employees. That affiliation provides a separate basis for the debarments of BFLP and LJGDB.
 - c. AM-AR, JAIR, DII, APS, USO, and UNC-LSI are affiliates of each other as evidenced by the interlocking management or ownership, use of shared/common facilities, equipment, and employees. That affiliation provides a separate basis for the debarments of AM-AR, JAIR, DII, APS, USO, and UNC-LSI.
 - d. Dawnthrive and APS are affiliates of each other as evidenced by the interlocking management or ownership, use of shared/common facilities, equipment, and employees. That affiliation provides a separate and independent basis for the debarment of APS.
 - e. AM-AR, JAIR, and USO are affiliates because directly or indirectly AM-AR controls or can control JAIR and USO. That affiliation provides a separate and independent basis for the debarments of JAIR and USO.
 - f. DII, and APS are affiliates because directly or indirectly DII controls or can control APS. That affiliation provides a separate basis for the debarment of APS.
 - g. D. Coombs, Dawnthrive, and APS are affiliates because directly or indirectly D. Coombs controls or can control Dawnthrive and APS. That affiliation provides a separate basis for the debarment of APS.

DECISION

Pursuant to the authority granted by FAR Subpart 9.4, Defense FAR Supplement, subpart 209.4, and 32 C.F.R. Section 25, and based on the preponderance of the evidence contained in the administrative record and the findings herein, Gary Douglas Burks, a/k/a Douglas Burks, a/k/a G. Douglas Burk, AM-AR International, Ltd., a/k/a American Argeon, a/k/a AM-AR Riyadh, a/k/a Airborne Product Support - Louisville, a/k/a Airborne Product Support - Kentucky, JAIR United, Inc., d/b/a Jet Aircraft Instrument Repair, Douglas Industries, Inc., d/b/a Airborne Product Support, Ltd., a/k/a APS, a/k/a APS - California, U.S. Overseas, Inc., are debarred for a period of fifteen years from January 18, 2000, the date they were suspended. Their debarments shall terminate on January 17, 2015.

Omni Capital Limited Partnership, f/k/a Burks Family Limited Partnership, Linda J or G Douglas Burk, a/k/a G D Burk, and UNC-LSI, Inc., a/k/a UNCLSI, Inc., are debarred for a period of ten years from April 14, 2004, the date they were proposed for debarment. Their debarments shall terminate on April 13, 2014.



STEVEN A. SHAW
Deputy General Counsel
(Contractor Responsibility)